
R.N.R.

Before Mahesh Grover, J

SMT. PAVITAR KAUR AND ANOTHER—*Petitioners*

versus

STATE OF PUNJAB AND OTHERS—*Respondents*

CWP No. 255 of 2006

7th July, 2010

Constitution of India, 1950—Arts. 14, 16 & 226—Sugarfed inviting options for VRS—No decision taken for more than 2 years—Sugarfed deciding to restructure organization reviewing its earlier order of VRS—No comprehensive criteria adopted or formulated while retaining certain employees—Action of Sugarfed retaining employees without adopting any criteria is totally arbitrary, discriminatory and violative of Arts. 14 & 16 of Constitution—Merely because Sugarfed had unilaterally deposited amounts in accounts of petitioners would not, in any way, prejudice their case and bind them to such an unilateral decision—Not sustainable in eyes of law—Petitions allowed while holding petitioners entitled to all benefits except salary and allowances admissible under rules.

Held. that the respondent-Sugarfed took no action on the options exercised by the employees for as many as two years and continued to treat them as its regular employees even though the V.R.S. contemplated a life of only six months. The action of the respondent-Sugarfed was, therefore, palpably unjustified, compounded further by its decision to retain certain employees which exercise again was conducted arbitrarily without laying down any cogent criteria for the same. Moreover, there is material on record to show that the petitioners had accepted the amounts under protest. Even otherwise, in view of the reasoning which has been given

above, when the VRS in pursuance of which the petitioners had responded was kept in abeyance for more than two years and was virtually substituted by another decision of restructuring the organization by retaining certain employees, I am of the view that merely because the respondent-Sugarfed had unilaterally deposited the amounts in the accounts of the petitioners would not, in any way, prejudice their case and bind them to such an unilateral decision.

(Para 15 & 16)

Pawan Kumar, Senior Advocate with Saqib Ali Khan, Advocate, *for the petitioners.*

Sarjit Singh, Senior Advocate with Vikas Singh, Advocate, *for respondent No. 2. None for other respondents.*

(2) C.W.P. No. 1612 of 2006

K.S. Boparai, Advocate, *for the Petitioners.*

Sarjit Singh, Senior Advocate with Vikas Singh, Advocate, *for respondent No. 2. None for other respondents.*

(3) C.W.P. No. 1892 of 2006

K.S. Boparai, Advocate, *for the Petitioners.*

Sarjit Singh, Senior Advocate with Vikas Singh, Advocate, *for respondent No. 2.*

G. S. Bal, Advocate, *for respondent No. 8. None for other respondents.*

(4) C.W.P. No. 2065 of 2006

Nemo for petitioners.

Sarjit Singh, Senior Advocate with Vikas Singh, Advocate, *for respondent No. 2. None for other respondents.*

(5) C.W.P. No. 2584 of 2006

Ms. Madhu P. Singh, Advocate, *for the petitioner.*

Sarjit Singh, Senior Advocate with Vikas Singh, Advocate, *for respondent No. 3. None for other respondents.*

(6) C.W.P. No. 3274 of 2006

Ravi Verma and S.P. Verma, Advocates, *for the petitioner.*

Sarjit Singh, Senior Advocate with Vikas Singh, Advocate, *for respondent No. 2. None for other respondents.*

(7) C.W.P. No. 6322 of 2006

K.S. Boparai, Advocate, *for the Petitioner.*

Sarjit Singh, Senior Advocate with Vikas Singh, Advocate, *for respondent No. 2. None for other respondents.*

(8) C.W.P. No. 9698 of 2006

S.S. Rangi and H.S. Tuli, Advocates, *for the Petitioner.*

Sarjit Singh, Senior Advocate with Vikas Singh, Advocate, *for respondent No. 2.*

G.S. Bal, Advocate, *for respondent No. 8. None for other respondents.*

(9) C.W.P. No. 10041 of 2005

K.S. Boparai, Advocate, *for the Petitioner.*

Sarjit Singh, Senior Advocate with Vikas Singh, Advocate, *for respondent No. 2. None for other respondents.*

MAHESH GROVER, J :

(1) By this judgment, I propose to dispose of the above mentioned nine writ petitions because by and large the facts giving rise to the controversy involved therein are having a commonality and there is equal commonality in the proposition of law that has emerged from the pleadings of the parties.

(2) The petitioners were employees of the Punjab State Cooperative Sugar Mill Limited (hereinafter described as 'the respondent-Sugarfed'). They were working on different posts of Class-III and Class-IV in its head office. A joint seniority list was being maintained separately

for their respective classes. On 1st September, 1993, the respondent-Sugarfed circulated a Voluntary Retirement Scheme (for short 'V.R.S.') for all its employees posted in head office and elsewhere. The object of the V.R.S. was to achieve optimum human resource utilisation and as a measure of disinvestment since the respondent-Sugarfed was facing financial crunch. The V.R.S. was to remain operational for a period of six months and the employees were required to exercise their options on the prescribed proforma by 30th September, 2003 upto 5.00 P.M. It was specifically mentioned in the V.R.S. that no application will be entertained after the stipulated date and time.

(3) The petitioners, as also other serving employees in the head office of the respondent-Sugarfed seventy in all, chose to exercise their options seeking voluntary retirement pursuant to the V.R.S. by the prescribed date. For more than two years thereafter, the petitioners did not hear anything from the respondent-Sugarfed regarding the action taken pursuant to the options exercised by them and during this interregnum, a decision was taken by it on 25th April, 2005 to go in for re-structuring and in this process, it decided to retain twenty seven employees according to the required strength calculated by the management which was reflected in Annexure-II attached with decision dated 25th April, 2005. It is pertinent to mention here that in all 207 employees from the respondent-Sugarfed had opted for V.R.S. out of which employees working at head office were 70. The decision dated 25th April, 2005 while contemplating retention of 27 employees only, sought approval of the Registrar, Cooperative Societies, Punjab for reduction of the staff as proposed therein and as a consequence to abolish the posts in excess of the employees, the number of which was determined at '27'. It is also relevant to quote the relevant paragraph of the decision dated 25th April, 2005 which has been attached as Annexure P4 in C.W.P. No. 255 of 2006. The same reads as under :—

“The matter regarding re-structuring of Sugarfed was discussed with RCS, Punjab and it was agreed that in case of Sugarfed head office, 27 employees may be retained (as per revised Annexure-II enclosed) and the remaining 44 employees may be given VRS with the funds which Sugarfed may pay from its own resources.”

(4) A Committee was thereafter constituted by the respondent-Sugarfed and pursuant to the decision dated 25th April, 2005, twenty seven employees were retained while in the case of others, the options by them under the V.R.S. were accepted on 9th December, 2005 when the amount due to them was deposited in their salary accounts.

(5) The petitioners constituted a group of employees whose options for V.R.S. were accepted. According to them, the action of the respondent-Sugarfed was arbitrary and was not the result of any rationale. Their grievance can broadly be encapsulated as follows :—

1. That the options were sought in the year 2003 and no decision was taken for more than two years which period is relevant because the V.R.S. was to remain in operation only for a period of six months.
2. That during this interregnum, the petitioners continued to work and some of the employees were even sent on deputation.
3. That the decision to re-structure the organization was taken behind their back without any intimation or notice to them which could not have been done as it virtually amounted to reviewing of the earlier V.R.S. in response to which they had submitted options to retire.
4. That while taking a decision to retain certain employees, no comprehensive criteria was adopted or formulated on the basis of which a justifiable action could be taken regarding those employees who were to be retained or those whose services were to be dispensed with.
5. That majority of the employees, who were retained belonged to Punjab Khand Udyog Limited which had been wound up earlier and whose employees were absorbed in the respondent-Sugarfed in the year 1991 without any benefit of seniority of the past service rendered by them which question stood settled on the basis of a decision rendered by this Court in C.W.P. No. 11219 of 1992 decided on 2nd August, 1993 (Annexed as Annexure P13 with C.W.P. No. 255 of 2006).

6. That the action of the respondent-Sugarfed in not formulating any cogent policy while retaining certain employees and while dispensing with the services of others is clearly discriminatory and arbitrary and is hit by the provisions of Articles 14 and 16 of the Constitution of India because of the reason that even future employment in the public sector undertakings/government organisations was clearly debarred in view of the V.R.S. circulated by it.
7. That even though the decision of re-structuring the respondent-Sugarfed contemplated retention of twenty seven employees, yet, ultimately forty one employees were retained.
8. That the amounts which were deposited in the salary accounts of the petitioners, even though received, but under protest as they had represented that if retention had to be made on certain employees, then they should be retained.

(6) The respondent-Sugarfed has filed its written statement in C.W.P. No. 255 of 2006 while placing reliance on the functional aspects of the V.R.S. to say that action was taken purely under it in which there was a stipulation that skilled and qualified employees shall be retained and the services of others could be dispensed with. It has been pleaded that all the seventy employees posted at the head office came within the ambit of the eligibility criteria laid down in the V.R.S. and once the amounts were deposited after having accepted the options exercised by the petitioners and others, they could not make any grouse out of their non-retention in service.

(7) The submissions/contentions that have been raised before this Court are more or less on the lines of the stands taken by the petitioners and the respondent-Sugarfed as have been delineated above. In addition, learned counsel for the respondent-Sugarfed placed reliance on a judgment of the Supreme Court in **Punjab and Sind Bank and another versus S. Ranveer Singh Bawa and another, (1)**, to support the plea that the petitioners could not challenge their ouster from service in face of the fact that they had accepted the payment of the amounts deposited in their accounts.

(8) Consequently, this Court now embarks upon the endeavour to determine the issue involved in these cases.

(9) The facts which are not disputed are that the petitioners were employees of the respondent-Sugarfed and were posted in the head office. They constituted a group of seventy employees in all. The respondent-Sugarfed circulated the V.R.S. with the ostensible purpose of tidying over the financial crisis and also for achieving optimum human resource utilization. The V.R.S. was to remain operational for a period of six months. All the seventy employees posted in the head office of the respondent-Sugarfed exercised their options under the V.R.S.

(10) The respondent-Sugarfed, who had brought its own employees to the brink of unemployment, was, therefore, required to act with some element of promptitude so as to lessen the impact of uncertainty with which the employees were confronted. Rather, it chose a path of inaction. The reason which has been propounded before this Court for such an inaction was that the decision to accept the options of the employees and retire them involved huge financial implications for which necessary sanction and approval had to come from the State Government.

(11) The Court is not enamoured of the explanation which has been put forward for the simple reason that the decision of the government and its functionaries which affects the rights of an employee, even though involving financial implications, should have been taken within a reasonable time and the employees could not have been left with sword of impending unemployment for all times to come. The laudable object of the V.R.S. was disinvestment and optimum utilisation of the human resource and the delay in taking a decision defied both as it neither resulted in utilisation of the human resource nor it achieved the objective of reducing financial burden on the resources of the respondent-Sugarfed. Rather, the respondent-Sugarfed burdened itself with its inaction on account of payment of salary and allowances to the employees for another two years. In any eventuality, even if these aspects are to be ignored and some leverage is to be given to the respondent-Sugarfed on account of inaccuracies and the ways of the decision taking process in the government, causing delays, yet, the core question would be that once the respondent-Sugarfed took the decision of re-structuring the organisation by retaining certain employees, then

whether such a decision was enforced by making a coherent and logical policy or not. Annexure P4 which has been attached with C.W.P. No. 255 of 2006 shows that the respondent-Sugarfed took a decision to retain 27 employees when it evaluated its needs which is reflected in Annexure-II attached therewith. Strangely enough, at the time of implementation of the said decision, forty one employees were retained. This not only reveals a complete departure from the earlier decision, but also exemplified the complete arbitrariness on the part of the respondent-Sugarfed when it chose to accept the options of certain employees while retaining the others.

(12) What has been contended by the learned counsel for the respondent-Sugarfed is that only those employees were retained whose career record was good and that entire action was taken pursuant to the V.R.S. itself which contemplated retention of the skilled employees.

(13) I am afraid, no such criteria has been revealed to the Court as to on what basis and how was the assessment of the career record of the employees done? Even though it has been stated that a Committee was formed, yet, the whole exercise should have been reflective of a justiciable criteria which should have been manifested itself in the decision of the respondent-Sugarfed to retain such employees.

(14) It is a settled proposition of law that action of a public authority should be fair and able to withstand judicial scrutiny. In my opinion, the decision of the respondent-Sugarfed to retain forty one employees without adopting any criteria to evaluate either their career record or to display its needs is totally arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India and hence, unsustainable.

(15) Much has been said by the counsel for the respondent-Sugarfed that once the petitioners have accepted the amounts which were deposited in their accounts on account of acceptance of their applications under the V.R.S. and, therefore, they were estopped from making any grouse on that account. Reliance has also been placed on the judgment in the case of **Punjab and Sind Bank and another versus S. Ranveer Singh Bawa and another** (*supra*) to say that once the amounts were deposited by the respondent-Sugarfed and accepted by the petitioners, the V.R.S. became effective and the employees had no option, but to go out of the organisation. I have gone through the judgment referred above,

but find that the same is of no assistance to the case of the respondent-Sugarfed as it was a case where the voluntary retirement scheme was to commence with effect from 1st February, 2000 and remain operational till 31st December, 2000 and during this period, respondent No. 1 therein exercised option on 6th December, 2000, but sought to withdraw it on 22nd December, 2000. The scheme was modified on 23rd December, 2000 and the employee continued to press the withdrawal of his option on 30th December, 2000 and 17th January, 2001 and followed it up by various remainders, but that was not accepted in view of the clauses thereof which prohibited such withdrawal and also in view of the fact that the bank had deposited the amount on 31st March, 2001. Thus, the facts themselves reveal that the entire exercise undertaken by the bank was with promptitude as within few months of the time when the option was exercised by such employee, he was handed over the amount which was contemplated in the voluntary retirement scheme, but in the instant case, the respondent-Sugarfed took no action on the options exercised by the employees for as many as two years and continued to treat them as its regular employees even though the V.R.S. contemplated a life of only six months. The action of the respondent-Sugarfed was, therefore, palpably unjustified, compounded further by its decision to retain certain employees which exercise again was conducted arbitrarily without laying down any cogent criteria for the same.

(16) Moreover, there is material on record to show that the petitioners had accepted the amounts under protest. Even otherwise, in view of the reasoning which has been given above, when the V.R.S. in pursuance of which the petitioners had responded was kept in abeyance for more than two years and was virtually substituted by another decision of restructuring the organisation by retaining certain employees, I am of the view that merely because the respondent-Sugarfed had unilaterally deposited the amounts in the accounts of the petitioners would not, in any way, prejudice their case and bind them to such an unilateral decision.

(17) Looking at it from any angle, the action of the respondent-Sugarfed cannot be termed to be sustainable in the eyes of law. as a result thereof, the impugned orders/letters in all the writ petitions are quashed and the petitions stand allowed. The petitioners are directed to be taken

back in service and except for salary and allowances, they shall be entitled to all other such benefits as are admissible to them under the relevant service rules.